

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)
Act 170 of 1964

691.1401 Definitions.

Sec. 1. As used in this act:

(a) "Municipal corporation" means a city, village, or township or a combination of 2 or more of these when acting jointly.

(b) "Political subdivision" means a municipal corporation, county, county road commission, school district, community college district, port district, metropolitan district, or transportation authority or a combination of 2 or more of these when acting jointly; a district or authority authorized by law or formed by 1 or more political subdivisions; or an agency, department, court, board, or council of a political subdivision.

(c) "State" means the state of Michigan and its agencies, departments, commissions, courts, boards, councils, and statutorily created task forces and includes every public university and college of the state, whether established as a constitutional corporation or otherwise.

(d) "Governmental agency" means the state or a political subdivision.

(e) "Highway" means a public highway, road, or street that is open for public travel and includes bridges, sidewalks, trailways, crosswalks, and culverts on the highway. The term highway does not include alleys, trees, and utility poles.

(f) "Governmental function" is an activity that is expressly or impliedly mandated or authorized by constitution, statute, local charter or ordinance, or other law. Governmental function includes an activity, as directed or assigned by his or her public employer for the purpose of public safety, performed on public or private property by a sworn law enforcement officer within the scope of the law enforcement officer's authority.

(g) "Township" includes charter township.

(h) "Volunteer" means an individual who is specifically designated as a volunteer and who is acting solely on behalf of a governmental agency.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986;—Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999;—Am. 2001, Act 131, Imd. Eff. Oct. 15, 2001.

Compiler's note: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

"(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986."

In *Hyde v. University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that "1986 PA 175 was enacted, effective July 1, 1986." Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Enacting section 1 of Act 205 of 1999 provides:

"Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act."

Enacting section 1 of Act 131 of 2001 provides:

"Enacting section 1. The provisions of this amendatory act do not limit or reduce the scope of a governmental function as defined by statute or common law."

Popular name: Governmental Immunity Act

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691.1402 Repairing and maintaining highways; damages for bodily injury or damage to property; liability, procedure, and remedy as to county roads; judgment against state; payment of judgment; effect of contractual undertaking to perform work on state trunk line highway; limitations on duties of governmental agency; liability of municipal corporation.

Sec. 2. (1) Except as otherwise provided in section 2a, each governmental agency having jurisdiction over a highway shall maintain the highway in reasonable repair so that it is reasonably safe and convenient for public travel. A person who sustains bodily injury or damage to his or her property by reason of failure of a governmental agency to keep a highway under its jurisdiction in reasonable repair and in a condition reasonably safe and fit for travel may recover the damages suffered by him or her from the governmental agency. The liability, procedure, and remedy as to county roads under the jurisdiction of a county road commission shall be as provided in section 21 of chapter IV of 1909 PA 283, MCL 224.21. The duty of the state and the county road commissions to repair and maintain highways, and the liability for that duty, extends only to the improved portion of the highway designed for vehicular travel and does not include sidewalks, trailways, crosswalks, or any other installation outside of the improved portion of the highway designed for vehicular travel. A judgment against the state based on a claim arising under this section from acts or

omissions of the state transportation department is payable only from restricted funds appropriated to the state transportation department or funds provided by its insurer.

(2) If the state transportation department contracts with another governmental agency to perform work on a state trunk line highway, an action brought under this section for tort liability arising out of the performance of that work shall be brought only against the state transportation department under the same circumstances and to the same extent as if the work had been performed by employees of the state transportation department. The state transportation department has the same defenses to the action as it would have had if the work had been performed by its own employees. If an action described in this subsection could have been maintained against the state transportation department, it shall not be maintained against the governmental agency that performed the work for the state transportation department. The governmental agency also has the same defenses that could have been asserted by the state transportation department had the action been brought against the state transportation department.

(3) The contractual undertaking of a governmental agency to maintain a state trunk line highway confers contractual rights only on the state transportation department and does not confer third party beneficiary or other contractual rights in any other person to recover damages to person or property from that governmental agency. This subsection does not relieve the state transportation department of liability it may have, under this section, regarding that highway.

(4) The duty imposed by this section on a governmental agency is limited by sections 81131 and 82124 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81131 and 324.82124.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1990, Act 278, Imd. Eff. Dec. 11, 1990;—Am. 1996, Act 150, Imd. Eff. Mar. 25, 1996;—Am. 1999, Act 205, Imd. Eff. Dec. 21, 1999.

Compiler's note: Enacting section 1 of Act 205 of 1999 provides:

“Enacting section 1. Sections 1 and 2 of 1964 PA 170, MCL 691.1401 and 691.1402, as amended by this amendatory act, and section 2a, as added by this amendatory act, apply only to a cause of action arising on or after the effective date of this amendatory act.”

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1403 Defective highways; knowledge of defect, repair.

Sec. 3. No governmental agency is liable for injuries or damages caused by defective highways unless the governmental agency knew, or in the exercise of reasonable diligence should have known, of the existence of the defect and had a reasonable time to repair the defect before the injury took place. Knowledge of the defect and time to repair the same shall be conclusively presumed when the defect existed so as to be readily apparent to an ordinarily observant person for a period of 30 days or longer before the injury took place.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1404 Notice of injury and defect in highway.

Sec. 4. (1) As a condition to any recovery for injuries sustained by reason of any defective highway, the injured person, within 120 days from the time the injury occurred, except as otherwise provided in subsection (3) shall serve a notice on the governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

(2) The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. In case of the state, such notice shall be filed in triplicate with the clerk of the court of claims. Filing of such notice shall constitute compliance with section 6431 of Act No. 236 of the Public Acts of 1961, being section 600.6431 of the Compiled Laws of 1948, requiring the filing of notice of intention to file a claim against the state. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, if he is physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, or the chief administrative officer, or his deputy, or a legal officer of the governmental agency as directed by the legislative body or chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury.

(3) If the injured person is under the age of 18 years at the time the injury occurred, he shall serve the notice required by subsection (1) not more than 180 days from the time the injury occurred, which notice may be filed by a parent, attorney, next friend or legally appointed guardian. If the injured person is physically or mentally incapable of giving notice, he shall serve the notice required by subsection (1) not more than 180 days after the termination of the disability. In all civil actions in which the physical or mental capability of the person is in dispute, that issue shall be determined by the trier of the facts. The provisions of this subsection shall apply to all charter provisions, statutes and ordinances which require written notices to counties or municipal corporations.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1972, Act 28, Imd. Eff. Feb. 19, 1972

Constitutionality: Notice requirement provision of section held to arbitrarily split all tortfeasors into two differently treated subclasses: private tortfeasors to whom no notice of claim is required, and governmental tortfeasors to whom notice is required. Such treatment held to violate equal protection guarantee of U.S. Const., Amend. XIV, § 1, and Mich. Const., Art. I, § 2. *Reich v. State Highway Department*, 386 Mich. 617, 194 N.W.2d 700 (1972).

The 120-day notice provision contained in this section does not violate the Michigan Constitution if it is posited as having the legitimate purpose of avoiding actual prejudice to the state. *Hobbs v. Department of State Highways*, 398 Mich. 90, 247 N.W.2d 754 (1975); *Kerkstra v. Department of State Highways*, 398 Mich. 103, 247 N.W.2d 759 (1975).

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1405 Government owned vehicles; liability for negligent operation.

Sec. 5. Governmental agencies shall be liable for bodily injury and property damage resulting from the negligent operation by any officer, agent, or employee of the governmental agency, of a motor vehicle of which the governmental agency is owner, as defined in Act No. 300 of the Public Acts of 1949, as amended, being sections 257.1 to 257.923 of the Compiled Laws of 1948.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1406 Public buildings; dangerous condition; liability; notice, contents, service.

Sec. 6. Governmental agencies have the obligation to repair and maintain public buildings under their control when open for use by members of the public. Governmental agencies are liable for bodily injury and property damage resulting from a dangerous or defective condition of a public building if the governmental agency had actual or constructive knowledge of the defect and, for a reasonable time after acquiring knowledge, failed to remedy the condition or to take action reasonably necessary to protect the public against the condition. Knowledge of the dangerous and defective condition of the public building and time to repair the same shall be conclusively presumed when such defect existed so as to be readily apparent to an ordinary observant person for a period of 90 days or longer before the injury took place. As a condition to any recovery for injuries sustained by reason of any dangerous or defective public building, the injured person, within 120 days from the time the injury occurred, shall serve a notice on the responsible governmental agency of the occurrence of the injury and the defect. The notice shall specify the exact location and nature of the defect, the injury sustained and the names of the witnesses known at the time by the claimant.

The notice may be served upon any individual, either personally, or by certified mail, return receipt requested, who may lawfully be served with civil process directed against the responsible governmental agency, anything to the contrary in the charter of any municipal corporation notwithstanding. If required by the legislative body or chief administrative officer of the responsible governmental agency, the claimant shall appear to testify, when physically able to do so, and shall produce his witnesses before the legislative body, a committee thereof, the chief administrative officer, his deputy, or a legal officer of the governmental agency, as directed by the legislative body or by the chief administrative officer of the responsible governmental agency, for examination under oath as to the claim, the amount thereof, and the extent of the injury. Notice to the state of Michigan shall be given as provided in section 4. No action shall be brought under the provisions of this section against any governmental agency, other than a municipal corporation, except for injury or loss suffered after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1407 Immunity from tort liability; intentional torts; immunity of judge, legislator, official, and guardian ad litem; definitions.

Sec. 7. (1) Except as otherwise provided in this act, a governmental agency is immune from tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function. Except as otherwise provided in this act, this act does not modify or restrict the immunity of the state from tort liability as it existed before July 1, 1965, which immunity is affirmed.

(2) Except as otherwise provided in this section, and without regard to the discretionary or ministerial nature of the conduct in question, each officer and employee of a governmental agency, each volunteer acting on behalf of a governmental agency, and each member of a board, council, commission, or statutorily created task force of a governmental agency is immune from tort liability for an injury to a person or damage to property caused by the officer, employee, or member while in the course of employment or service or caused by the volunteer while acting on behalf of a governmental agency if all of the following are met:

(a) The officer, employee, member, or volunteer is acting or reasonably believes he or she is acting within the scope of his or her authority.

(b) The governmental agency is engaged in the exercise or discharge of a governmental function.

(c) The officer's, employee's, member's, or volunteer's conduct does not amount to gross negligence that is the proximate cause of the injury or damage.

(3) Subsection (2) does not alter the law of intentional torts as it existed before July 7, 1986.

(4) This act does not grant immunity to a governmental agency or an employee or agent of a governmental agency with respect to providing medical care or treatment to a patient, except medical care or treatment provided to a patient in a hospital owned or operated by the department of community health or a hospital owned or operated by the department of corrections and except care or treatment provided by an uncompensated search and rescue operation medical assistant or tactical operation medical assistant.

(5) A judge, a legislator, and the elective or highest appointive executive official of all levels of government are immune from tort liability for injuries to persons or damages to property if he or she is acting within the scope of his or her judicial, legislative, or executive authority.

(6) A guardian ad litem is immune from civil liability for an injury to a person or damage to property if he or she is acting within the scope of his or her authority as guardian ad litem. This subsection applies to actions filed before, on, or after May 1, 1996.

(7) As used in this section:

(a) "Gross negligence" means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

(b) "Search and rescue operation" means an action by a governmental agency to search for, rescue, or recover victims of a natural or manmade disaster, accident, or emergency on land or water.

(c) "Search and rescue operation medical assistant" means an individual licensed to practice 1 or more of the occupations listed in subdivision (e), acting within the scope of the license, and assisting a governmental agency in a search and rescue operation.

(d) "Tactical operation" means a coordinated, planned action by a special operations, weapons, or response team of a law enforcement agency that is 1 of the following:

(i) Taken to deal with imminent violence, a riot, an act of terrorism, or a similar civic emergency.

(ii) The entry into a building, area, watercraft, aircraft, land vehicle, or body of water to seize evidence, or to arrest an individual for a felony, under the authority of a warrant issued by a court.

(iii) Training for the team.

(e) "Tactical operation medical assistant" means an individual licensed to practice 1 or more of the following, acting within the scope of the license, and assisting law enforcement officers while they are engaged in a tactical operation:

(i) Medicine, osteopathic medicine and surgery, or as a registered professional nurse, under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(ii) As an emergency medical technician, emergency medical technician specialist, or paramedic under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1970, Act 155, Imd. Eff. Aug. 1, 1970;—Am. 1986, Act 175, Imd. Eff. July 7, 1986;—Am. 1996, Act 143, Eff. May 1, 1996;—Am. 1999, Act 241, Imd. Eff. Dec. 28, 1999;—Am. 2000, Act 318, Imd. Eff. Oct. 24, 2000;—Am. 2004, Act 428, Imd. Eff. Dec. 17, 2004;—Am. 2005, Act 318, Imd. Eff. Dec. 27, 2005.

Compiler's note: Section 3 of Act 175 of 1986 provides:

"(1) Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

“(2) Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986.”

Enacting section 1 of Act 318 of 2000 provides:

“Enacting section 1. This amendatory act applies only to a cause of action arising on or after the effective date of this amendatory act.”

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1408 Claim or civil action against officer or employee of governmental agency for injuries caused by negligence; services of attorney; payment of claim; judgment for damages; indemnification; payment or settlement of judgment; criminal action against officer or employee of governmental agency; services of attorney; reimbursement for legal expenses; liability on governmental agency not imposed.

Sec. 8. (1) Whenever a claim is made or a civil action is commenced against an officer, employee, or volunteer of a governmental agency for injuries to persons or property caused by negligence of the officer, employee, or volunteer while in the course of employment with or actions on behalf of the governmental agency and while acting within the scope of his or her authority, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer, employee, or volunteer as to the claim and to appear for and represent the officer, employee, or volunteer in the action. The governmental agency may compromise, settle, and pay the claim before or after the commencement of a civil action. Whenever a judgment for damages is awarded against an officer, employee, or volunteer of a governmental agency as a result of a civil action for personal injuries or property damage caused by the officer, employee, or volunteer while in the course of employment and while acting within the scope of his or her authority, the governmental agency may indemnify the officer, employee, or volunteer or pay, settle, or compromise the judgment.

(2) When a criminal action is commenced against an officer or employee of a governmental agency based upon the conduct of the officer or employee in the course of employment, if the employee or officer had a reasonable basis for believing that he or she was acting within the scope of his or her authority at the time of the alleged conduct, the governmental agency may pay for, engage, or furnish the services of an attorney to advise the officer or employee as to the action, and to appear for and represent the officer or employee in the action. An officer or employee who has incurred legal expenses after December 31, 1975 for conduct prescribed in this subsection may obtain reimbursement for those expenses under this subsection.

(3) This section does not impose liability on a governmental agency.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1978, Act 141, Imd. Eff. May 11, 1978;—Am. 2002, Act 400, Imd. Eff. May 30, 2002.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1409 Liability insurance; waiver of defense.

Sec. 9. (1) A governmental agency may purchase liability insurance to indemnify and protect the governmental agency against loss or to protect the governmental agency and an agent, officer, employee, or volunteer of the governmental agency against loss on account of an adverse judgment arising from a claim for personal injury or property damage caused by the governmental agency or its agent, officer, employee, or volunteer. A governmental agency may pay premiums for the insurance authorized by this section out of current funds.

(2) The existence of an insurance policy indemnifying a governmental agency against liability for damages is not a waiver of a defense otherwise available to the governmental agency in the defense of the claim.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 2002, Act 400, Imd. Eff. May 30, 2002.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1410 Claims against state, political subdivision, or municipal corporation; procedure.

Sec. 10. (1) Claims against the state authorized under this act shall be brought in the manner provided in sections 6401 to 6475 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and against any political subdivision or municipal corporation by civil action in any court having jurisdiction.

(2) Except as otherwise provided in this act, any claim that is authorized under this act shall be subject to the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, being sections 600.101 to 600.9947 of the Michigan Compiled Laws.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986.

Compiler's note: In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that “1986 PA 175 was enacted, effective July 1, 1986.” Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1411 Claim against government agency; limitation of actions.

Sec. 11. (1) Every claim against any governmental agency shall be subject to the general law respecting limitations of actions except as otherwise provided in this section.

(2) The period of limitations for claims arising under section 2 of this act shall be 2 years.

(3) The period of limitations for all claims against the state, except those arising under section 2 of this act, shall be governed by chapter 64 of Act No. 236 of the Public Acts of 1961.

History: 1964, Act 170, Eff. July 1, 1965.

Constitutionality: This section does not deny the equal protection of the law. *Forest v. Parmalee*, 402 Mich. 348, 262 N.W.2d 653 (1978).

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1412 Claims under act; defenses available.

Sec. 12. Claims under this act are subject to all of the defenses available to claims sounding in tort brought against private persons.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1413 Damage arising out of performance of proprietary function.

Sec. 13. The immunity of the governmental agency shall not apply to actions to recover for bodily injury or property damage arising out of the performance of a proprietary function as defined in this section. Proprietary function shall mean any activity which is conducted primarily for the purpose of producing a pecuniary profit for the governmental agency, excluding, however, any activity normally supported by taxes or fees. No action shall be brought against the governmental agency for injury or property damage arising out of the operation of proprietary function, except for injury or loss suffered on or after July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965;—Am. 1986, Act 175, Imd. Eff. July 7, 1986.

Compiler's note: Section 3 of Act 175 of 1986 provides:

Sections 1, 7, and 13 of Act No. 170 of the Public Acts of 1964, as amended by this amendatory act, being sections 691.1401, 691.1407, and 691.1413 of the Michigan Compiled Laws, shall not apply to causes of action which arise before July 1, 1986.

Section 6a of Act No. 170 of the Public Acts of 1964, as added by this amendatory act, shall apply to cases filed on or after July 1, 1986.”

In *Hyde v University of Michigan Regents*, 426 Mich 223 (1986), the Supreme Court stated that “1986 PA 175 was enacted, effective July 1, 1986.” Act 175 was approved by the Governor July 6, 1986, and filed with Secretary of State July 7, 1986.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1414 Repeal.

Sec. 14. Chapter 22 of Act No. 283 of the Public Acts of 1909, as amended, being sections 242.1 to 242.8 of the Compiled Laws of 1948; section 2904 of Act No. 236 of the Public Acts of 1961, being section 600.2904 of the Compiled Laws of 1948; Act No. 59 of the Public Acts of 1951, as amended, being sections 124.101 to 124.103 of the Compiled Laws of 1948, are repealed.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act

GOVERNMENTAL LIABILITY FOR NEGLIGENCE (EXCERPT)

Act 170 of 1964

691.1415 Effective date of act.

Sec. 15. This act shall take effect July 1, 1965.

History: 1964, Act 170, Eff. July 1, 1965.

Popular name: Governmental Immunity Act